

We elect candidates by the exchange of competing ideas. When communication is narrow, ideas go undebated, and those with money, power, or influence are viable to attain their objectives through fear, hate, lies, and division.

Our most important democratic asset, the airwaves, is governed by legacy regulation that no longer safeguards equitable access and thereby interferes with the right of free speech by the great majority.

As Justice Douglas concluded in *Superior Films v Department of Education*, January 18, 1954, “the First Amendment draws no distinction between the various methods of communicating ideas.”

Although Federal authority is permissible to license spectrum that emphasize First Amendment rights to licensed users, it's authority has been prohibited when safeguarding free speech for the great majority by public interest (3).

Preferential treatment for license holders is inadequate and any ambiguity in law should not be solved that breaches equitable station power, wavelength, and frequency for the great majority to engage in free speech.

Furthermore, U.S. spectrum is governed by inefficient legacy regulation. Technology no longer requires exclusive use to spectrum by license therefore any federal law governing the airwaves must also provide maximum use of spectrum with equitable access to station power, wavelength, and frequency for the communication of free speech by the great majority.

The Federal Communication Commission is currently undergoing [incentive auctions](#) that encourage over-the-air TV companies to sell blocks of “beachfront” spectrum.

This spectrum is considered prime for its strength and reach and will shape how we access information for decades to come. It should provide equitable access for the public to engage in free speech by way of allocating municipal wireless networks and similar accommodations for public use.

Similarly all ISPs are bound by federal law that governs communication by bandwidth and ‘no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications’ (Radio Act of 1927. Section 29).

Insofar as broadband is governed by Federal law and serves as instrument for free speech in the “communication of intelligence” and as “an instrument for ... purveying commodities” - ISPs “have to accept and transmit for all persons on an equal basis without discrimination” (4).

The safeguards put in place establishing equitable access and free speech have been stripped away. We the people must not forget those rights.

GOVERNMENT REGULATION

The federal government began to regulate radio communication in response to interference. Two parties could not broadcast on the same frequency at the same time and location without causing interference making it impossible to communicate.

Thus Congress enacted the Radio Act of 1927. Section 29 reads:

Nothing in this Act shall be understood or construed to give the licensing authority the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications.

Section 5 in March 1928 provides equality for people of all zones in spectrum allocation, frequency, and station power with the following:

'It is hereby declared that the people of all the zones established by section 82 (2) of this chapter are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and in so far as there are applications therefor; and shall make a fair and equitable allocation of licenses, wave lengths, time for operation, and station power to each of the States, the District of Columbia, the Territories and possessions of the United States within each zone, according to population' (1).

With the safeguard of free speech and "fair and equitable allocation of licenses, wave lengths, ... and station power" the Federal Radio Commission (FRC) issued license with exclusive right to frequency to those best serving the public interest.

'Since the number of channels is limited and the number of persons desiring to broadcast is far greater than can be accommodated, the commission must determine from among the applicants before it which of them will, if licensed, best serve the public' (2).

But by implementing the public interest standard, the Commission was accused of breaching a licensee's right to free speech, and the Courts discharged the FRC with the responsibility to license by public interest (3).

Herein lies the great inequality, while Government authority is permissible to license spectrum that emphasize First Amendment rights to licensed users, it's authority has been prohibited when safeguarding free speech for the great majority by public interest.

Our most important democratic asset, the airwaves, is governed by inefficient legacy regulation that no longer safeguards equitable access to the airwaves and thereby interferes with the right of free speech by means of telecommunication.

As The Commission on Freedom of the Press wrote in 1947, "Civilized society is a working system of ideas. It lives and changes by the consumption of ideas. Therefore, it must make sure that as many as possible of the ideas which its members have are available for its examination. It must guarantee freedom of expression, to the end that all adventitious hindrances to the flow of ideas shall be removed."

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The Federal Communication Commission is currently undergoing [incentive auctions](#) that encourage over-the-air TV companies to sell blocks of “beachfront” spectrum that could lead to the end of broadcast television.

This spectrum is considered prime for its strength and reach and will shape how we access information for decades to come. It should provide equitable access for the public to engage in free speech by way of allocating municipal wireless networks and similar accommodations for public use.

Similarly all ISPs are bound by federal law that governs communication by bandwidth and ‘no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications’ (Radio Act of 1927. Section 29).

Insofar as broadband is governed by Federal law and serves as instrument for free speech in the “communication of intelligence” and as “an instrument for ... purveying commodities” - ISPs “have to accept and transmit for all persons on an equal basis without discrimination” (4).

The safeguards put in place establishing equitable access and free speech have been stripped away. We the people must not forget those rights.

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1. Section 5 of the Act of March 28, 1928, 45 Stat. 373 (47 USCA § 89)
 2. Second FRC Ann Rep, 1928, pp. 169-70
 3. 25 Fed. Reg. 7291 (1960) Report and Statement of Policy re: Commission en banc Programming Inquiry; Ass'n v. Douds, 339 U.S. 382, 401, 70 S.Ct. 674, 685, 94 L.Ed. 925 (1950); see, e.g., Public Utilities Comm'n v. Pollak, 343 U.S. 451, 462 n. 8, 72 S.Ct. 813, 820, 96 L.Ed. 1068 (1952);
 4. Third FRC Ann Rep, 1929.

Resources

- Radio Act of 1927, Public No. 632 - 69th Congress
- 25 Fed. Reg. 7291 (1960) Report and Statement of Policy re: Commission en banc Programming Inquiry; Ass'n v. Douds, 339 U.S. 382, 401, 70 S.Ct. 674, 685, 94 L.Ed. 925 (1950); see, e.g., Public Utilities Comm'n v. Pollak, 343 U.S. 451, 462 n. 8, 72 S.Ct. 813, 820, 96 L.Ed. 1068 (1952);
- Mark Taylor. "When the Middleman and ISP are Aligned." Beyond Bandwidth. Level 3 Communications Blog, 20 May 2014. Web. 24 June 2014.
<http://blog.level3.com/global-connectivity/when-the-middleman-and-isp-are-aligned/>>
- FCC Order: In the Matter of: Preserving the Open Internet; Broadband Industry Practices – (rel. Dec. 23, 2010) – FCC 10-201; GN Docket No. 09-191; WC Docket No. 07-52

- The Great Lakes Statement, In the Matter of the Application of Great Lakes Broadcasting Co., FRC Docket No. 4900, 3 FRC Ann. Rep. 32 (1929); U.S. v Grimaud, 220 U.S. 506, 519, 31 S. Ct. 480, 55 L. Ed. 563; Union Bridge Co. v U.S., 204 U.S. 364, 27 S. Ct. 367, 51 L. Ed 523; Field v. Clark, 143 U.S. 649, 692, 12 S. Ct. 495, 36 L. Ed. 294.

- US. v Standard Brewery, 251 U.S. 210, 220, 40 St. Ct. 139, 64 L. Ed. 229; U.S. v Jin Fuey Moy, 241 U.S. 394, 401, 36 S. Ct. 658, 60 L. Ed. 1061, Ann Cas. 1917D, 854; Endlich, Interpretation of Statutes, par 216; Swiss National Insurance Co. v. Miler, 53 App. D.C. 173, 289 F. 571, 576; Washington v. Miller, 235 U.S. 422, 428, 35 S. Ct. 119, 59 L. Ed. 295; U.S. v Nix, 189 U.S. 199, 205, 23 S. Ct. 495, 47 L. Ed. 775; Townsend v Little, 109 U.S. 504, 519, 3 S. Ct. 357, 27 L. Ed. 1012

-. Report and Statement of Policy re: Commission en banc Programming Inquiry, 25 Fed. Reg. 7291, July 29, 1960; See: U-NII Order, wireless mesh networks, wireless internet service providers.

- National Broadband Plan, Chapter 1: Introduction, p3.

- Robert W. McChesney, Telecommunications, Mass Media, and Democracy: the Battle for the Control of U.S. Broadcasting, 1928-1935. New York: Oxford University Press, 1993. p 18.

Question

- If “the right to the use of the airwaves is conditioned upon ... license “ because of characteristics peculiar to telecommunication, is government abandoning licensing whenever those peculiar characteristics no longer exist?

- What are the benefits of licensed versus unlicensed spectrum?

- Would the public benefit from greater unlicensed spectrum?

- What are the benefits of Municipal Wireless Networks?

- What laws limits municipal and community broadband?

- At what rate and by what measure is the FCC setting aside U-NII spectrum for public use?

- Is broadband “an instrument for the communication of intelligence”?

- Do spectrum monopolies facilitate broadband congestion?

- Do spectrum monopolies constrain broadband access, speed, or price?

- Are last mile ISPs providing fair, efficient, and transparent services to consumers?

- Would the public benefit from fair, efficient, and transparent broadband services?

- Would the public benefit from networks publishing interconnection data logs?

- What commodities do ISPs own and define them?
- Do the commodities belonging to ISPs perform neutral, mechanical, or logistical services like pipes, wires, or highways?
- If ISPs provide services that are not neutral, mechanical, or logistical, define those services according to the duties performed?
- Can consumers opt out of non ancillary services?
- What is commercially reasonable?
- What is the test, standard, or qualification in determining commercial reasonableness?
- Should colocation caching be mandatory for ISPs?
- Is broadband essential to the U.S. economy?
- Does broadband optimize spectrum efficiency by transporting multiple signals and traffic types? For example VOIP replaces the outdated circuit-switch communication with packet-switch communication while transporting additional signals and traffic types.